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Notice of Allowability

Application No.

10/505,198

Examiner

Nikita Wells

Applicant(s)

HOUGE ET AL.

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to "Request for Reconsideration under 37 CFR 1.111" received 2 October 2007.
2. ☒ The allowed claim(s) is/are 1-20, 22 and 30-60.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 10/10/07.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 10/02/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Nikita Wells
Primary Examiner
Art Unit: 2881

DETAILED ACTION

Allowable Subject Matter

1. Claims 1-20, 22, and 30-60 are allowed.
2. The following is an examiner's statement of reasons for allowance:

According to the "Request for Reconsideration under 37 C.F.R. §1.111" received October 2, 2007, the Applicant demonstrated to the Examiner's satisfaction that the nonstatutory double patenting rejection was improperly applied since both the application and the cited copending application No. 10/505,197 are international applications entered the national stage under 35 U.S.C. 371, both with a filing date of February 24, 2003 and both have the same statutory term date of February 24, 2023. As both the present application and the copending application have the exact same statutory term date, a nonstatutory obviousness-type double patenting rejection is improper in the instant case.

With respect to the independent claims 1, 8, 15, and 30, prior art fails to disclose or make obvious, in combination with other recited features of the claim limitations, a system for crystallography comprising: a sample holder for holding a crystalline sample; an electron source; a scanning actuator for controlling the relative movement between the electron beam and the crystalline sample, the scanning actuator being controllable for directing the electron beam at a series of spaced apart points within the sample area; a first processing system for generating crystallographic data based upon electron diffraction or contrast intensity image based upon secondary electron emissions from the crystalline sample.

With respect to the independent claims 38 and 50, prior art fails to disclose or make obvious, in combination with other recited features of the claim limitations, a method for

determining crystallography of bulk crystal sample comprising: providing a sample holder for holding a crystalline sample; generating a first ion beam; generating an electron beam; controlling the relative movement between the first ion beam, the electron beam, and the crystalline sample for directing the first ion beam at desired areas of the crystalline sample and for directing the electron beam at a series of points within the sample area; creating a contrast intensity image based upon secondary electron emissions from the crystalline sample and generating crystallographic data based upon electron diffraction from the crystalline sample; providing crystallographic information based on the contrast image intensity data and configured for determining whether sufficient data have been acquired to characterize the sample area.

The dependent claims 2-7, 9-14, and 16-20 and 22, are allowed by virtue of their dependence upon claims 1, 8 and 15, respectively. The dependent claims 31-37, 39-49, and 51-60, are allowed by virtue of their dependence upon claims 30, 38 and 50, respectively.

Drawings

3. New corrected formal drawings are required in this application because the submitted drawings contain hand drawn labels and notation. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Conclusion

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikita Wells whose telephone number is (571) 272-2484. The examiner can normally be reached on 8:30 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on (571) 272-2293. The central fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nikita Wells, Primary Examiner
Art Unit 2881
October 10, 2007